

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DARRYL LEE CHERRY,)
Plaintiff,)
)
v.) C.A. No. 04-292 Erie
)
UNITED STATES OF AMERICA, et al.,)
Defendants.)

ORDER

AND NOW, this 17th day of January, 2006;

IT IS HERE BY ORDERED that Plaintiff's Application to Proceed without Prepayment of Fees and Affidavit [Document # 26] is DISMISSED as moot, since this Court has already granted Plaintiff the right to proceed with this case *in forma pauperis* by Order dated November 2, 2005 [Document # 2].

IT IS FURTHER ORDERED that the parties are allowed ten (10) days from this date to appeal this order to a district judge pursuant to Local Rule 72.1.3 B. Failure to appeal within ten (10) days may constitute waiver of the right to appeal.

S/Susan Paradise Baxter
SUSAN PARADISE BAXTER
Chief U.S. Magistrate Judge